

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

[petitioner] is a patient in Dermatology Clinic being followed for epidermolysis bullosa. This is a genetic congenital condition of skin fragility. She constantly develops blisters and ulcers all over her body, but most prominently on hands, knees, feet, and any area of the skin where there is friction or rubbing. This is a permanent condition and resolution does not occur. Occasionally, the eyes or oral mucosa including the esophagus may be involved. Because of the chronic inflammation, overall growth and development may be impacted. The appropriate acquisition of fine and gross motor skills can be impacted due to the presence of blisters and erosions which limit both fine and gross motor skills. Frequently, extra assistance is necessary to both recognize and treat cognitive, developmental, and motor abnormalities as they arise to allow for the maximum development of [petitioner's] potential. It is expected that [petitioner] will need ongoing medical evaluation and treatment for the remainder of her life.

At the hearing (held on March 11, 1998) the

petitioner's mother conceded that even if the petitioner were found to meet the disability criteria for Medicaid eligibility (see *infra*), her parents' income places her far in excess of the maximum income limitations. Thus, the petitioner can qualify for Medicaid only if she meets the criteria under the "Katie Beckett" program for disabled children. For the reasons discussed below, it is concluded that she does not.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual (MM) Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Under the federal regulations children are considered disabled if they have an impairment "which compares in severity to an impairment that would make an adult (a person

over age 18) disabled". 20 C.F.R. § 416.906.

In this case there is considerable evidence as to the petitioner's impairment and the treatment she requires. There is not much evidence, however, as to how this impairment would restrict a similarly-afflicted adult's ability to work on a regular basis. The Department (DDS) has determined that her impairment does not meet the above definition of disability. Although the hearing officer finds this decision somewhat problematic, given the other barriers to the petitioner's eligibility, it need not be reviewed at this time.

As noted above, there is no dispute that the petitioner's parents' income is far in excess of the maximum eligibility for regular (disability based) Medicaid. Thus, even if she were found disabled, she could qualify only if she meets the additional criteria under the federal "Katie Beckett" program for disabled children. Those criteria are set forth in Medicaid Manual § M200(10) as follows:

Disabled individuals 18 years of age or younger are eligible under special "Katie Beckett" rules when there has been a determination that:

- the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded:
- it is appropriate to provide such care for the individual outside such an institution:
- the estimated amount which would be expended for medical assistance for the individual for

such care outside an institution is not greater than the estimated amount which would otherwise be expended for medial assistance for the individual within an appropriate institution; and

- the individual would be eligible for Medicaid if he or she were in a medical institution.

Note: this group is known as the Katie Beckett coverage group. None of the income or resources of the parent(s) of a child included in this group is considered in determining his/her eligibility for Medicaid. The income of the child (only) is compared to the Institutional Income Standard (see procedures manual) in determining his/her eligibility for Medicaid.

At the hearing the petitioner's mother conceded that although the petitioner needs daily care and attention from her parents for her sores and blisters, and also receives medical attention and monitoring on a regular basis, the level of care provided to her on an ongoing basis is not the equivalent of what she would receive in a nursing home or other medical institution. According to her mother and the medical evidence, the petitioner lives at home, is only slightly delayed physically and developmentally, participates in family activities, and attends school (albeit in a Special Education program) on a regular basis. There is no indication in the evidence that she requires, or would be appropriate for, institutional care at this time.

Because her condition at present does not appear to require institutionalization, it must be concluded that the petitioner would not qualify for Medicaid without the income

and resources of her parents being considered.¹ See MM § 200 et seq. Inasmuch as there is no dispute in this matter that the parents' income far exceeds the Medicaid maximum, the Department's decision must be affirmed. 3 V.S.A. 3091(d) and Fair Hearing Rule No. 17.

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¹If the petitioner's doctors were to certify at some point that she would require institutional care, the petitioner is free to reapply for Medicaid.